

The complaint

Mr P complains that Legal and General Assurance Society Limited (L&G) have declined a claim on his life assurance policy.

Throughout the claim and complaint process, Mr P has had a representative helping him. In this decision, any reference to Mr P includes the actions and comments of his representative.

What happened

Mr P took out a joint life assurance policy with the late Mrs P, with L&G, which started in April 2020. I'm very sorry to hear about Mrs P's death. I know this has impacted Mr P deeply and I wish him all the best for his future. Mrs P sadly passed away in 2022, at which point Mr P raised a claim.

L&G declined the claim and avoided the policy as they said Mrs P had answered two of the questions incorrectly. They considered this to be a deliberate or reckless misrepresentation, which entitled them to take this action.

Mr P brought his complaint to us and our investigator didn't think it should be upheld. She felt that there had been a qualifying misrepresentation and L&G had acted in line with the law. Our investigator had only considered one of the questions L&G had said Mrs P had answered incorrectly.

Mr P didn't agree with the investigator and has asked for an ombudsman's decision. They didn't think Mrs P had answered the question incorrectly. They also didn't think the question was clear. Finally, they highlighted that L&G has since updated the question to reflect how Mrs P answered it. As agreement couldn't be reached, the complaint has been passed to me to decide.

What I provisionally decided – and why

In my provisional decision, I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Based on what I've seen so far, I don't intend to uphold this complaint. I recognise my decision will be very disappointing to Mr P, but I don't find that L&G has done anything wrong, treated Mr P unfairly, contrary to the policy terms or to law. It follows that there is no basis for me to require L&G to pay Mr P's claim. I've explained why below.

When considering complaints such as this, I need to consider the relevant law, rules and industry guidelines. The relevant rules, set up by the Financial Conduct Authority, say that an insurer must deal with a claim promptly and fairly, and not unreasonably decline it. So, I've thought about whether L&G acted in line with these requirements when it declined to settle Mr P's claim.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

L&G thinks Mrs P failed to take reasonable care not to make a misrepresentation when she answered the following questions:

'During the last 12 months have you smoked any cigarettes, cigars, a pipe or used nicotine replacements? A simple medical test may be required to check your answer. If you've smoked any cigarettes, cigars, a pipe, used e-cigarettes (whether or not they contain nicotine), or used nicotine replacement at all in the last 12 months you need to answer 'Yes – regularly' or 'Yes – occasionally'.'

and

'Under anxiety:

Have you ever tried to harm yourself or planned to harm yourself in any way?'

Mrs P answered both of the above questions "No". L&G has provided Mrs P's medical history to explain why they think there was a misrepresentation. Having looked at the medical records I can see the following:

- 6 June 2013 – Mrs P reported self-harming*
- 25 January 2017 – Mrs P reported thoughts of self-harm*
- 17 May 2019 – Mrs P reported thoughts of self-harm*
- 15 October 2019 – Mrs P prescribed antidepressant medication*
- 19 January 2020 – Mrs P noted as vapes*
- 27 January 2020 – Mrs P noted as vapes*
- 24 August 2020 – Mrs P reported as given smoking cessation advice*
- 20 January 2021 – Mrs P noted as having an anxiety disorder for a while*

Based on the questions asked, and Mrs P's medical history, I agree that the questions were answered incorrectly.

Mr P feels very strongly that vaping isn't the same as e-cigarettes and has provided some information from the internet to back this up. I've reviewed the information provided on this by Mr P and I don't agree. One of the websites provided, sells e-cigarettes and has

contradicting information on it. Our investigator directed Mr P to the NHS website which states that e-cigarettes are also known as vapes. I think this is the most reliable source. Mr P has also referenced that L&G has since added vaping to their question. I don't think this means that the question was unclear or changes the fact that vapes are also e-cigarettes.

Mr P also feels strongly about the wording of the self-harm question. As this was within the "Health – Last 2 years" section. Whilst I understand Mr P's point, I don't agree that the question was unclear. The application initially asked if Mrs P had suffered from anxiety, depression or stress that required treatment or counselling in the last two years. When Mrs P answered this yes, a new set of questions needed to be answered. As can be seen above, these questions started with "Have you ever". I think it's clear that these new questions weren't just limited to the last two years. Based on the above, I don't think Mrs P took reasonable care when answering the questions.

As there was a misrepresentation, under CIDRA I need to see if it was a qualifying misrepresentation. This means, did the incorrect information make a difference.

L&G has provided me with the relevant historic underwriting manual pages as well as commentary from an underwriter. This shows, that had the questions been answered correctly, L&G would have applied a higher premium as a result of the vaping but would have postponed the application due to the anxiety and self-harm. Guidance from the Association of British Insurers (ABI) says that if an application would have been postponed, the insurer should try to complete the application process as far as possible. In this case, after the postponement period, L&G has confirmed that Mr and Mrs P would have needed to complete a new application. The ABI guidance states that in these circumstances, the application can be treated as being declined.

Based on the above, I'm satisfied Mrs P's misrepresentation was a qualifying one. I would like to make it clear that the terminology being used is in line with CIDRA. Mr P has told us that Mrs P was an honest, decent member of society who wouldn't lie. I don't dispute this and my decision doesn't take anything away from Mrs P's character.

L&G has avoided the policy and refunded all premiums back to Mr P. This is the remedy under CIDRA for a careless misrepresentation. Careless is the lowest level of misrepresentation under CIDRA. Whilst L&G has stated they believe Mrs P acted deliberately or recklessly when answering the questions, as they've followed the remedy for a careless misrepresentation, I think the actions L&G has taken are fair and reasonable."

Therefore, I wasn't minded to direct L&G to do anything further as I didn't think they'd done anything wrong.

Responses to my provisional decision

Mr P confirmed he didn't agree with my provisional decision. He maintains that there hasn't been a misrepresentation and the claim should be paid. He made the following comments in response to my provisional decision:

- The cause of death isn't related to the misrepresentations
- The report of self-harm was from when Mrs P wasn't an adult
- Thoughts of self-harm are not actual self-harm.
- Some of the medical information listed was after the application

- Mr P knew Mrs P and so is a more reliable source
- L&G changing their question to include vaping does mean it was previously unclear
- Underwriting information isn't available to applicants when applying
- Mrs P provided consent for L&G to check her medical records and so they should have

L&G didn't respond to the provisional decision by the deadline.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've thought carefully about the responses to my provisional decision. Having done so, while I appreciate it will come as a disappointment to Mr P, my conclusions remain the same. I'll explain why.

It's clear how strongly Mr P feels about the cause of death not being linked to the misrepresentation. However, neither CIDRA or the ABI guidance specifies that the misrepresentation needs to be directly linked to the cause of death for it to apply. Whilst an insurer isn't supposed to specifically try to find an unrelated misrepresentation, if they do identify a misrepresentation, whether it's related or not, they are allowed to rely on it in line with the remedies in CIDRA.

In relation to the medical history in my provisional decision, I accept that not all of this is relevant to the specific questions that Mrs P was asked. However, Mrs P was asked if she'd ever tried to harm herself. The question didn't give any limits on how old Mrs P had to have been. I don't think Mrs P's age at the time meant that she didn't need to disclose it. I still think the question was answered incorrectly and there was a misrepresentation.

I also accept that Mr P knew Mrs P, whereas I don't. My decision is based on all the facts of the case. This includes Mrs P's medical records but also Mr P's testimony.

Insurers will often update their application forms depending on the information they want to find out. Adding vaping to the application form may have made it clearer but that doesn't mean that L&G wanting to know about vaping wasn't clear from the application Mrs P completed. As I said in my provisional decision, the NHS defines vaping and e-cigarettes as the same thing. By asking about e-cigarettes, I think it was clear that they wanted to know about vaping as well. As I set out in my provisional decision, the postponement of the policy was as a result of the self-harm/anxiety questions. Had I agreed that the smoking/vaping question was unclear, which I don't, it wouldn't change the outcome of the complaint.

Underwriting information isn't available to applicants at any point. This is because it's commercially sensitive. Insurers will assess the risk based on the answers on the application.

Mrs P was required during the application to provide consent for L&G to check her medical records. This consent isn't given for L&G to check on every occasion. Consent is gained on every application so that L&G can check if they need to. There is no requirement for L&G to check the answers given on every application. In this case, the answers provided didn't require L&G to get any additional information on Mrs P's medical history. There is a duty on the consumer to provide the correct information to the insurer. It wouldn't be feasible for

insurers to check that all information on every insurance policy is correct prior to approval. This would also add significant extra time and cost to insurance policies.

My final decision

For the reasons I've given above, my final decision is that I don't uphold this complaint. I don't require Legal and General Assurance Society Limited to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 19 September 2024.

Anthony Mullins
Ombudsman